

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
KIMBERLY D. LATHROP,

Plaintiff,

-against-

OSCAR C. DETUYA, III,

Defendant.

-----x
WP4

Docket No.:

07 CV. 3181

COMPLAINT AND
JURY DEMAND

U.S. DISTRICT COURT
FILED
201 APR 20 A II:
S.D. OF N.Y.P.

NATURE OF THE CASE

FIRST: This is an action brought by plaintiff KIMBERLY D. LATHROP (“LATHROP”) against the defendant OSCAR C. DETUYA, III (“DETUYA”), alleging personal injuries sustained due to an automobile collision on May 15, 2006. By this action, the plaintiff seeks money damages for personal injuries, medical expenses, pain and suffering and attorney’s fees.

JURISDICTION

SECOND: This court has jurisdiction under 28 U.S.C. Sec. 1332:a:2. The action is between citizens of different states and the matter in controversy exceeds \$75,000.00, exclusive of costs and interest.

THIRD: Venue is proper in this district pursuant to 28 U.S.C. Sec. 1391, as the acts complained of herein took place in the County of Westchester, State of New York.

PARTIES

FOURTH: Plaintiff KIMBERLY D. LATHROP is over the age of eighteen (18) years of age and is a resident of the City of Somers Point in the State of New Jersey.

FIFTH: Upon information and belief, defendant OSCAR C. DETUYA, III is over the age of eighteen (18) years of age and is a resident of the City of Bridgeport in the State of Connecticut.

VENUE

SIXTH: This cause of action arose within the Souther District of the State of New York between two citizens of jurisdictions outside of the State of New York. Venue is, therefore, proper under 28 U.S.C. 1391.

**AS AND FOR THE CAUSE OF ACTION ON BEHALF OF
THE PLAINTIFF, KIMBERLY D. LATHROP**

SEVENTH: Plaintiff repeats and re-alleges each and every allegation contained in paragraphs "FIRST" through "SIXTH" of this Complaint as though each were fully set forth at length herein.

EIGHTH: That at all times hereinafter mentioned, the DETUYA owned a 1999 Ford automobile, bearing license plate# 712LU/CT for the year 2006.

NINTH: That at all times hereinafter mentioned, the defendant DETUYA operated, managed and/or controlled a 1999 Ford automobile bearing license plate #712LU/CT for the year 2006.

TENTH: That at all times hereinafter mentioned, Westchester Avenue, at or near the intersection of Kenilworth Road in Harrison, New York, was and still is a public thoroughfare.

ELEVENTH: That on or about May 15, 2006, the plaintiff LATHROP was traveling

westbound on Westchester Avenue, in the town of Harrison, County of Westchester, in the State of New York, at or near the intersection with Kenilworth Avenue when she was struck by the vehicle owned and operated by the defendant DETUYA thereby causing personal injuries to the plaintiff and damage to the plaintiff's vehicle.

TWELFTH: That the defendant DETUYA was driving in a reckless and careless manner, causing his vehicle to strike and/or collide with the plaintiff's vehicle.

THIRTEENTH: As a result of the negligence of the defendant DETUYA, the plaintiff sustained injuries requiring medical attention, some of which injuries, on information and belief, may be of permanent nature and character. Said injuries caused Plaintiff to incur extensive financial loss for said medical attention, pain and suffering, mental anguish as well as future pain and suffering from permanent injuries.

FOURTEENTH: That the aforementioned occurrence and the injuries resulting therefrom occurred solely by reason of the negligence and carelessness of the defendant DETUYA and without any negligence on the part of the plaintiff LATHROP contributing thereto.

FIFTEENTH: That the aforesaid collision was caused solely through the carelessness and negligence of the defendant DETUYA in the operation and control of his aforesaid motor vehicle: in that the defendant drove said vehicle in violation of the Rules of the Road then and there prevailing; in driving in such a careless and negligent manner so as to cause said vehicle to collide with, run into and/or strike the motor vehicle owned and operated by the plaintiff; in failing to maintain, have and make use of sufficient, proper and adequate braking devices and mechanisms; in failing to have control over their aforesaid motor vehicles; in failing and omitting to take the necessary steps so as to avoid the collision herein; in failing to be reasonably alert; in failing to apprise the plaintiff of his approach; in operating his vehicle at an excessive rate of

speed for the conditions then and there prevailing; in failing to obey the Vehicle and Traffic Law of the State of New York; and, was otherwise careless and negligent in the premises.

SIXTEENTH: That by reason of the foregoing, the plaintiff LATHROP sustained serious personal injuries, medical expenses, pain and suffering all as a result of the fault and negligence of the defendant.

SEVENTEENTH: That by reason of the aforesaid injuries sustain by the plaintiff, she has become obligated and will in the future be obliged to spend diverse sums of money for medicines and medical care and attention in an effort to cure herself of her injuries.

EIGHTEENTH: That by reason of the aforementioned occurrence, this plaintiff has sustained a serious injury as defined in Section 5102 of the Insurance Law and any and all other applicable provisions of the Insurance Law of the State of New York and is therefore qualified to bring this action.

WHEREFORE, the plaintiff KIMBERLY D. LATHROP demands judgment against the defendant OSCAR C. DETUYA, III, for money damages for personal injuries, medical expenses, compensatory damages for pain and suffering, for mental anguish for severe emotional damages, attorney's fees and for such other and further relief as this court may deem just and proper.

Dated: March 16, 2007

MARVIN A. COOPER, P.C.

S/ William H. Cooper (#9613)
William H. Cooper, Esq.
Attorneys for Plaintiff LATHROP
175 Main Street, Suite 706
White Plains, New York 10601
(914) 428-9200

JURY DEMAND

Plaintiff demands a trial by jury with respect to all issues so triable.

MARVIN A. COOPER, P.C.

S/ William H. Cooper (#9613)
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175 Main Street, Suite 706
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(914) 428-9200

STATE OF NEW JERSEY)
ATLANTIC COUNTY)
ss.)

KIMBERLY D. LATHROP, being duly sworn, deposes and says: That I am the plaintiff in the within action; I have read the foregoing COMPLAINT AND JURY DEMAND and know the contents thereof; the same is true to my knowledge, except as to the matters herein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Kimberly Lathrop
KIMBERLY D. LATHROP

Sworn hereto before me this
30th day of March of 2007.

NOTARY PUBLIC

WILLIAM H. COOPER
Notary Public, State of New York
No. 4993021
Qualified in New York County
Commission Expires _____